

PATENT COOPERATION TREATY

Transferred 7/6/04
to Jeffrey D. His of
Edwards & Angell, LLP.
2 MAR 2005

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
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1501 FOURTH AVENUE
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JUL 23 2004

PCT

WRITTEN OPINION

(PCT Rule 66)

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JUL 26 2004

Date of Mailing
(day/month/year)

21 JUL 2004

EDWARDS & ANGELL, LLP
IP DOCKETING DEPT. (BOS)

Applicant's or agent's file reference

50557-12

REPLY DUE

within 2 months/days from
the above date of mailing

International application No.

PCT/US03/30304

International filing date (day/month/year)

23 September 2003 (23.09.2003)

Priority date (day/month/year)

23 September 2002 (23.09.2002)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61K 47/00; A61K 35/78 and US Cl.: 424/439, 442, 750

Applicant

JOHN I. HAAS, INC.

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 23 January 2005 (23.01.2005)

Name and mailing address of the IPEA/US

Mail Stop PCT, Attn: IPEA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (703) 872-9306

Authorized officer

Michele Flood

Telephone No. 571-272-1600

J. Roberts for

I. Basis of the opinion**1. With regard to the elements of the international application: ***

- ☒ the international application as originally filed
- ☒ the description:
pages 1-18, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____
- ☒ the claims:
pages 19-20, as originally filed
pages NONE, as amended (together with any statement) under Article 19
pages NONE, filed with the demand
pages NONE, filed with the letter of _____
- ☐ the drawings:
pages NONE, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages NONE, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE _____
- ☐ the claims, Nos. NONE _____
- ☐ the drawings, sheets/fig NONE _____

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

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V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims <u>NONE</u>	YES
	Claims <u>1-14</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-14</u>	NO
Industrial Applicability (IA)	Claims <u>1-14</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1-14 lack novelty under PCT Article 33(2) as being anticipated by Nisshin Flour Milling Co. Ltd. (JP 01 172341) because Nisshin Flour Milling Co. Ltd. disclose a composition comprising *Humulus lupulus* Linne (hops) combined with feed material for animal and fowl, which is used as a preventive and remedy for infectious diseases caused by *Clostridium perfringens*.

Claims 1-14 novelty under PCT Article 33(2) as being anticipated by Nisshin Flour Milling Co. Ltd. (JP 01 172340) because Nisshin Flour Milling Co. Ltd. disclose a composition comprising *Humulus lupulus* Linne (hops) combined with feed material for chickens, which is used as a preventive and remedy for infectious diseases caused by staphylococci.

Claims 1-14 lack novelty under PCT Article 33(2) as being anticipated by Beuchat et al. because Beuchat et al. disclose hop resin comprising humulones (humulone, cohumulone and adhumulone) and lupulones (lupulone, cohumulone and adlupulone) and exhibiting antimicrobial activity against both gram negative and gram positive bacteria.

Claims 1-5, 13 and 14 lack novelty under PCT Article 33(2) as being anticipated by Li Tuo Ping et al. because Li Tuo Ping et al. disclose compositions for potentiating growth factor production which contain a growth factor production potentiator originating in a plant, remedies or preventives for disease, wherein the production of growth factor should be potentiated, and foods, drinks or feeds for potentiating the production of growth factor each containing the above compositions; and functional foods, drinks or feeds excellent for improving health.

Claims 1-5, 13 and 14 lack novelty under PCT Article 33(2) as being anticipated by Fomichev VF because Fomichev VF discloses adding a beer yeast autolysate, edible chalk, and salt to animal food to improve its quality. The mixture contains beer grains, malt shoots, grain waste, barley floats, beer making waste, beer yeast, protein sediments and hops grains.

Claims 1-5, 13 and 14 lack novelty under PCT Article 33(2) as being anticipated by Makin because Makin discloses a method of making a food product by adding vegetable pulp, distillery meal, bran, ground oats or cottonseed meal or barley, spent hops, and liquids.

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.